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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

**JOHN TOS, AARON FUKUDA,
COUNTY OF KINGS**

Plaintiffs and Petitioners,

v.

**CALIFORNIA HIGH SPEED RAIL
AUTHORITY, et al.,**

Defendants and Respondents.

Case No. 34-2011-00113919-CU-MC-GDS

**RULING ON SUBMITTED MATTER:
REMEDIES ON PETITION FOR WRIT OF
MANDATE**

Introduction

On August 16, 2013, the Court issued a ruling in this matter finding that defendant/respondent California High Speed Rail Authority abused its discretion by approving a detailed funding plan under Streets and Highways Code section 2704.08(c) that did not comply with the requirements of subdivisions (c)(2)(D) and (K) of that statute. In that ruling, the Court directed the parties to submit further briefing on the issue of remedies.¹

Principally, the Court directed the parties to address the issue of whether issuance of a writ of mandate directing the Authority to rescind its approval of the November 3, 2011 funding plan would be a remedy with any real and practical effect. The Court also directed the parties to address the issue of

¹ In this ruling, the Court refers to defendant/respondent California High Speed Rail Authority as “the Authority”, and to plaintiffs/petitioners John Tos, et al., as “plaintiffs”.

1 whether the writ should address subsequent actions by the Authority, such as contract approvals, as well as
2 whether any such approvals involve the commitment or expenditure of Proposition 1A bond proceeds.

3 The parties have filed briefing and supporting evidence in response to the Court's ruling. On
4 November 8, 2013, the Court held a hearing on the issue of remedies and heard oral argument by counsel
5 for the parties. At the close of the hearing, the Court took the matter under submission.

6 The Court has considered the evidence submitted by the parties, as well as their oral and written
7 arguments, and now issues its ruling on remedies.

8 **Preliminary Procedural and Evidentiary Issues**

9 The Authority's special application to strike or disregard argument in plaintiffs' reply brief, or for
10 permission to file a surreply brief, is denied. Plaintiffs' reply brief did not raise entirely new arguments,
11 but rather addressed and rebutted arguments in the Authority's opposition brief. The Authority was not
12 precluded from addressing plaintiffs' rebuttal arguments in full at the hearing.

13 All requests for judicial notice filed by the parties in this phase of the proceedings are granted, and
14 all evidentiary objections are overruled.

15 **Issuance of a Writ of Mandate**

16 The primary issue of concern to the Court in relation to remedies was whether issuance of a writ of
17 mandate directing the Authority to rescind its approval of the November 3, 2011 funding plan would have
18 any real and practical effect. Based on the briefing and evidence the parties have submitted, the Court is
19 satisfied that issuance of the writ would have a real and practical effect in this case.

20 Specifically, the Court is persuaded that the preparation and approval of a detailed funding plan
21 that complies with all of the requirements of Streets and Highways Code section 2704.08(c) is a necessary
22 prerequisite for the preparation and approval of a second detailed funding plan under subdivision (d) of the
23 statute, which in turn is a necessary prerequisite to the Authority's expenditure of any bond proceeds for
24 construction or real property and equipment acquisition, other than for costs described in subdivision (g).
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26 The conclusion that the subdivision (c) funding plan is a necessary prerequisite to the subdivision
27 (d) funding plan is supported by the fact that only the first funding plan is required to make the critical
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1 certification that the Authority has completed “all necessary project level environmental clearances
2 necessary to proceed to construction”. (See, Streets and Highways Code section 2704.08(c)(2)(K).) The
3 subdivision (d) funding plan is not required to address environmental clearances. Thus, the subdivision (d)
4 funding plan, as a precondition for proceeding to construction, depends upon the adequacy of the
5 subdivision (c) funding plan in at least one critical respect.

6 In the absence of a valid subdivision (c) funding plan making the required certification of
7 environmental clearances, the Authority could prepare and submit a subdivision (d) funding plan and
8 proceed to commit and spend bond proceeds without ever certifying completion of the necessary
9 environmental clearances. As plaintiffs argue, proceeding to construction without all required project-
10 level environmental clearances could result in substantial delays in the project, or even a need to redesign
11 or relocate portions of the project, potentially at great cost to the State and its taxpayers. Streets and
12 Highways Code section 2704.08 is carefully designed to prevent that from happening, but that design is
13 frustrated if obvious deficiencies in the first funding plan are essentially ignored.

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15 Issuance of a writ of mandate directing the Authority to rescind its approval of the November 3,
16 2011 funding plan based on the finding that the funding plan did not comply with all of the requirements
17 of subdivision (c) thus will have a real and practical effect: it will establish that the Authority has not
18 satisfied the first required step in the process of moving towards the commitment and expenditure of bond
19 proceeds.

20 The Court therefore grants the petition for writ of mandate, and orders that a writ of mandate shall
21 issue pursuant to Code of Civil Procedure section 1085, directing the Authority to rescind its approval of
22 the November 3, 2011 funding plan.

23 The Court also asked the parties to address the issue of whether the writ should invalidate any
24 subsequent approvals made by the Authority in reliance on the November 3, 2011 funding plan. Plaintiffs
25 focused on the Authority’s approval of construction contracts with CalTrans and Tutor-Perini-Parsons,
26 arguing that those contracts necessarily involve the present commitment of bond proceeds for
27 construction-related activities that do not fall within the so-called “safe harbor” provision of Streets and
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1 Highways Code section 2704.08(g). Much of the argument on this issue centered on the Authority's
2 present use of federal grant money, which is not governed by Proposition 1A, and whether the manner in
3 which such federal funds were being used and spent virtually guarantees that Proposition 1A bond
4 proceeds eventually will have to be spent under these two contracts in order to satisfy federal matching
5 fund requirements.

6 The Court has reviewed the evidence submitted by the parties and is not persuaded that approval
7 of the two contracts at issue, or the use of federal grant money thus far, necessarily amounts to the present
8 commitment of Proposition 1A bond funds for activities outside the scope of subdivision (g).
9 Significantly, the Authority demonstrated that the two contracts contain termination clauses. Thus, the
10 Authority is not necessarily committed to spending the full face amount of those contracts. Similarly,
11 plaintiffs did not demonstrate convincingly that federal grant money that has been spent so far and that
12 currently is projected to be spent necessarily exceeds the amount of funds available to the Authority from
13 funds other than Proposition 1A bond proceeds, and therefore inevitably must be matched with Proposition
14 1A bond proceeds. It is simply unclear at this time how the pattern of spending on the project will
15 develop.
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17 The Court therefore concludes that the writ of mandate should not include any provision directing
18 the Authority to rescind its approval of the CalTrans or Tutor-Perini-Parsons contracts.

19 **Other Remedies**

20 In their briefing and argument, plaintiffs ask the Court to order other remedies, including an
21 injunction prohibiting the Authority from submitting a funding plan pursuant to subdivision (d) until it
22 prepares and approves a funding plan that complies with subdivision (c); a temporary restraining order or
23 injunction prohibiting the Authority from using federal grant money while this action is pending; and an
24 order directing a full accounting of past and projected expenditures on the high-speed rail project.

25 The Court finds that none of these remedies are appropriate at this point in the proceedings.

26 There is no evidence before the Court that indicates that the Authority is preparing, or is ready to
27 submit, a subdivision (d) funding plan at this point. There is thus no basis for concluding that the
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1 Authority is threatening to violate any applicable law or order of this Court relating to the preparation and
2 submission of such a plan, and no basis for issuing injunctive relief to halt such action.

3 There is also no evidence before the Court that the Authority is using, or planning to use, federal
4 grant money in violation of any applicable law or order of this Court. Plaintiffs' argument that an
5 injunction is necessary to prevent the commitment of Proposition 1A bond funds or the waste of federal
6 funds while this action is pending is not persuasive. As discussed above, the Court is not persuaded that
7 the Authority's use and projected use of federal grant money necessarily amounts to the present
8 commitment of Proposition 1A bond proceeds. Moreover, the Authority's use of federal grant money is
9 not regulated by Proposition 1A or its funding plan requirements.

10 Finally, the Court finds no proper basis on which to order a full accounting. Plaintiffs have not
11 demonstrated that there has been any impropriety in the expenditure of federal grant money, or of other
12 funds subject to the funding plan requirements of Streets and Highways Code section 2704.08(c) or (d),
13 that would require an accounting as a remedy.

14 The Court accordingly denies all requests for remedies other than the issuance of a writ of
15 mandate directing the Authority to rescind its approval of the November 3, 2011 funding plan.

16 **Plaintiffs' Remaining Writ Claims and Status of Individual Defendants**

17 The Authority requests dismissal of plaintiffs' remaining writ of mandate claims. At the hearing
18 on this matter, counsel for plaintiffs agreed on the record that, aside from the writ of mandate claims
19 addressed in the Court's August 16, 2013 ruling, all other writ of mandate claims were not ripe and could
20 be dismissed, and that plaintiffs intended to proceed on their claims under Code of Civil Procedure section
21 526a. The Court therefore orders all remaining writ of mandate claims dismissed.

22 The Authority also requests dismissal of all individual defendants named in this case. The request
23 for dismissal is denied on the ground that some or all of the individual defendants may be proper parties in
24 the remaining causes of action under Code of Civil Procedure section 526a, as they may have a role in the
25 use and expenditure of Proposition 1A bond proceeds, and could be necessary parties if any injunctive
26 relief is ordered. The writ of mandate that will be issued pursuant to the Court's August 16, 2013 ruling
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1 shall direct only the Authority to take specified action, and shall not direct any action on the part of any of
2 the individual defendants.

3 As previously agreed in an informal status and scheduling conference held with the Court on
4 November 8, 2013, all parties are directed to appear for a continued status and scheduling conference in
5 Department 31 at 1:30 p.m. on Friday, December 13, 2013 to address further proceedings, including trial,
6 on plaintiffs' claims under Code of Civil Procedure section 526a.

7 **Conclusion**

8 The petition for writ of mandate is granted for the reasons stated in the Court's ruling issued on
9 August 16, 2013. A writ of mandate shall issue pursuant to Code of Civil Procedure section 1085
10 directing the Authority to rescind its approval of the November 3, 2011 funding plan. No other relief is
11 ordered at this time.

12 Counsel for plaintiffs is directed to prepare an order granting the petition and a writ of mandate in
13 accordance with the Court's rulings in this matter; submit them to opposing counsel for approval as to
14 form in accordance with Rule of Court 3.1312(a); and thereafter submit them to the Court for signature
15 and issuance of the writ in accordance with Rule of Court 3.1312(b).
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19 DATED: November 25, 2013

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21 Judge MICHAEL P. KENNY
22 Superior Court of California,
23 County of Sacramento
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CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above-entitled **RULING ON SUBMITTED MATTER** in envelopes addressed to each of the parties, or their counsel of record or by email as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at 720 9th Street, Sacramento, California.

MICHAEL J. BRADY
Attorney at Law
1001 Marshall Street, Suite 500
Redwood City, CA 94063-2052
Email: mbrady@rmkb.com

STUART M. FLASHMAN
Attorney at Law
5626 Ocean View Drive
Oakland, CA 94618-1533
Email: stu@stuflash.com

S. MICHELE INAN
Deputy Attorney General
455 Golden Gate Avenue, Ste 11000
San Francisco, CA 94102-7004
Email: michele.inan@doj.ca.gov

STEPHANIE F. ZOOK
Deputy Attorney General
455 Golden Gate Avenue, Ste 11000
San Francisco, CA 94102-7004
Email: Stephanie.Zook@doj.ca.gov

TAMAR PACHTER
Supervising Deputy Attorney General
455 Golden Gate Avenue, Ste 11000
San Francisco, CA 94102-7004
Email: Tamar.Prachter@doj.ca.gov

RAYMOND L. CARLSON, ESQ.
Griswold LaSalle Cobb Dowd & Gen LLP
111 E. Seventh Street
Hanford, CA 93230
Email: carlson@griswoldlasale.com

THOMAS FELLEENZ
Chief Legal Counsel
770 L Street, Suite 800
Sacramento, CA 95814
Email: tfellenz@hsr.ca.gov

Dated: November 25, 2013

Superior Court of California,
County of Sacramento

By: S. LEE
Deputy Clerk